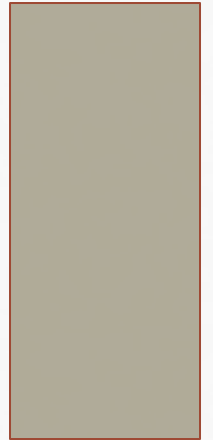


SUNBURST RANCH PUD

MASTER PLAN AMENDMENT

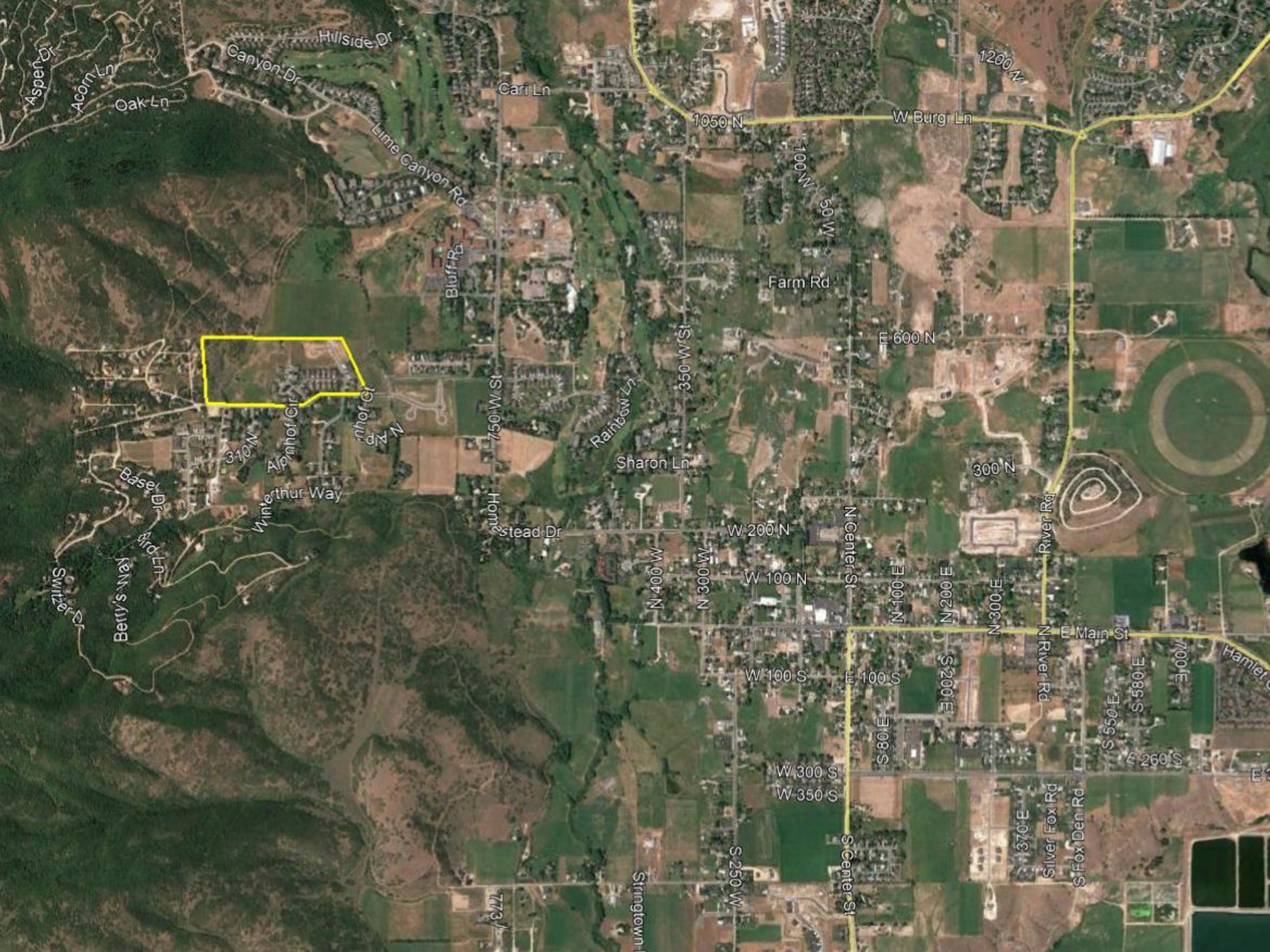


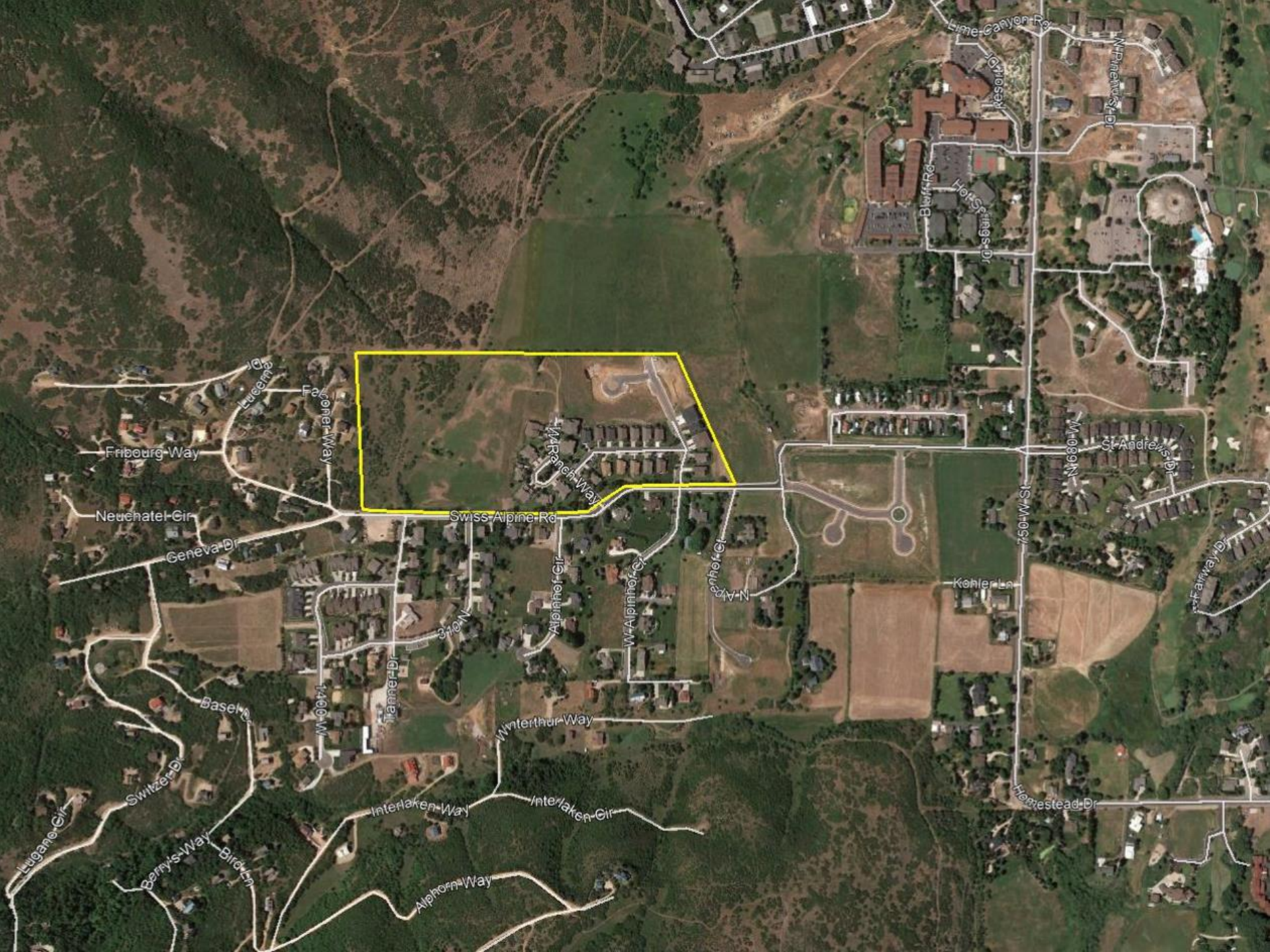
LAND USE SUMMARY

- 16.53 acres
- R-1-22 and RA-1-43 zoning
- 36 building pads
- Project is a Planned Unit Development
- Private roads will be maintained by the HOA

LAND USE SUMMARY

- The lots will connect to the Midway Sanitation District sewer and to the City's water line.
- Private trail that will loop through the development
- Originally approved in 1997
 - Vested with 36 units
 - Water rights for entire master plan were dedicated to the City
- Amended in 2010
 - 36 units





Lime Canyon Rd

N. P. Meadows Dr

Bluff Rd

Horseshoe Dr

750 W St

W 1089 N

St Andrews Dr

W Farway Dr

Kohler Ln

Homestead Dr

Swiss Alpine Rd

W. Ranch Way

N. N. St

Alpine Cir

W Alpine Cir

Winterthur Way

Interlaken Cir

Interlaken Way

Alphorn Way

Basel St

Switzer Dr

Berry's Way

Birden Ln

Neuchatel Cir

Geneva Dr

Fribourg Way

La Cornet Way

Lucerne St



Phase 3

Phase 2

Phase 1

Swiss Alpine Rd

Sunburst Ln

W Ranch Way

N Olympic

W Alpine Ct

Alpine Ct

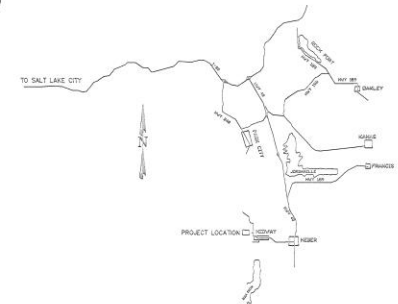
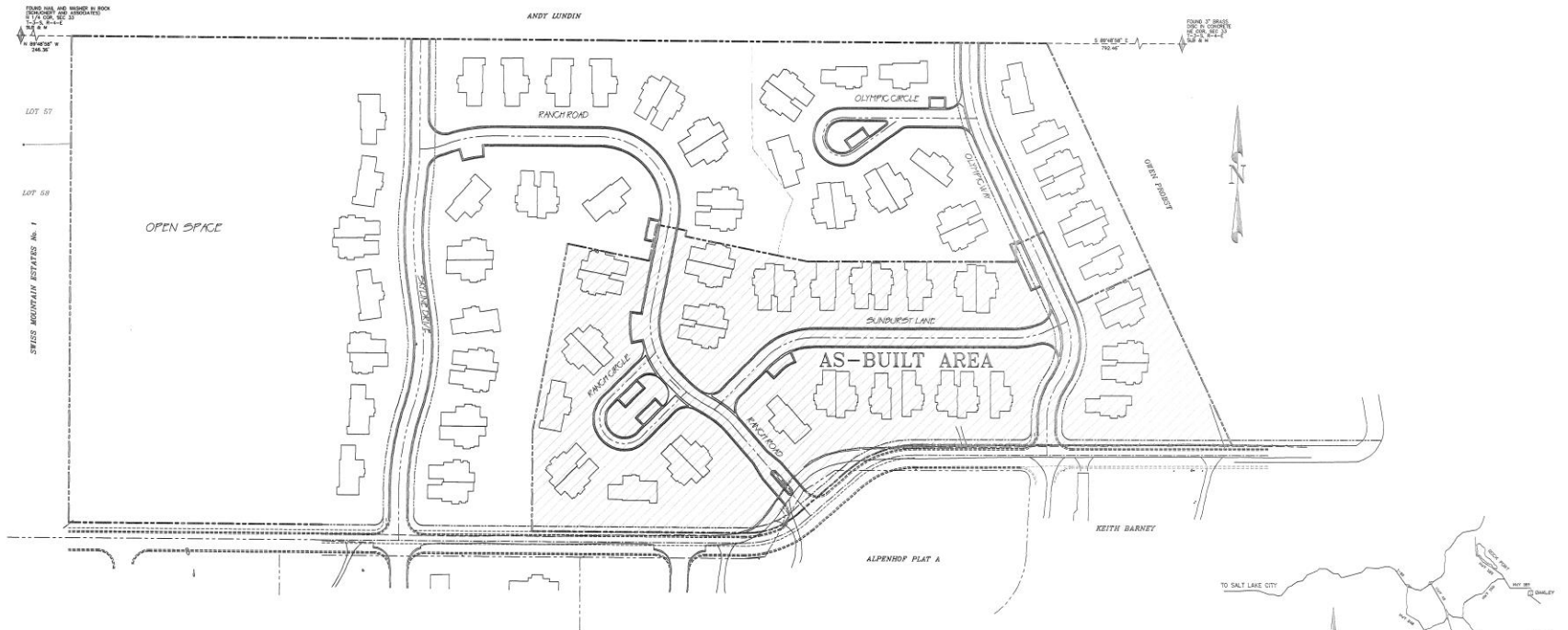
310 N

Panor Dr

1400 W

SUNBURST RANCH

PLANNED UNIT DEVELOPMENT



DRAWING INDEX	
SHEET #	DESCRIPTION
1	COVER
2-4	RECORD PLATS
5-8	UTILITIES PLANS
9	SEWER PLAN AND PROFILE LINES B, & C
10-17	PLAN AND PROFILE SHEETS
18-19	GRADING PLAN
20-23	DETAILS
	LANDSCAPING

AS-BUILT RECORD
 DECEMBER, 2000
 BASED ON INFORMATION
 PROVIDED BY CONTRACTOR
 TO CITY AND DEVELOPER
 CONSULTATION

VICINITY MAP

REV	BY	DATE	DESCRIPTION
	BC	12-23-00	AS-BUILT FOR PLAT "A" ONLY

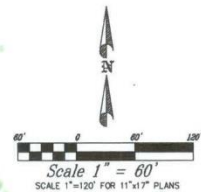
DESIGN	SCALE
DRAWN BC	ACCT. NO. 18-13809
CHECKED	FILE
CHECKED	DATE MAY 1998

CPS
 CONSULTING ENGINEERS, INC.
 CALDWELL RICHARDS ROBERTSON

285 EAST 100 SOUTH, SUITE 240
 SALT LAKE CITY, UTAH 84111
 PHONE 801/559-5585
 FAX 801/559-4272

SUNBURST RANCH
 PLANNED UNIT DEVELOPMENT
 LOCATED IN NORTHEAST QUARTER OF SEC. 33, T. 3 S., R. 4 E., S.L.B. & M.
 MIDWAY CITY, WASATCH COUNTY, STATE OF UTAH

SHEET 1
 OF 23
 DRWG. NO. 13809



- NOTES:
1. OLYMPIC WAY IS A PUBLIC STREET WITH PUBLIC SIDEWALKS.
 2. ALL OTHER STREETS, TRAILS AND SIDEWALKS WITHIN SUNBURST RANCH ARE PRIVATE.

LEGEND

- NATURAL LANDSCAPE
- GRASS
- EXISTING TREE
- PROPOSED TREE
- ASPHALT TRAIL
- RETAINING WALL

BOB CONNIE
SUNBURST RANCH P.U.D.
AMENDED MASTER PLAN

BERG ENGINEERING
 RESOURCE GROUP, P.C.
 380 E. Main St. Suite 8
 Midway, UT 84049
 ph. (435) 457-9749

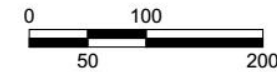
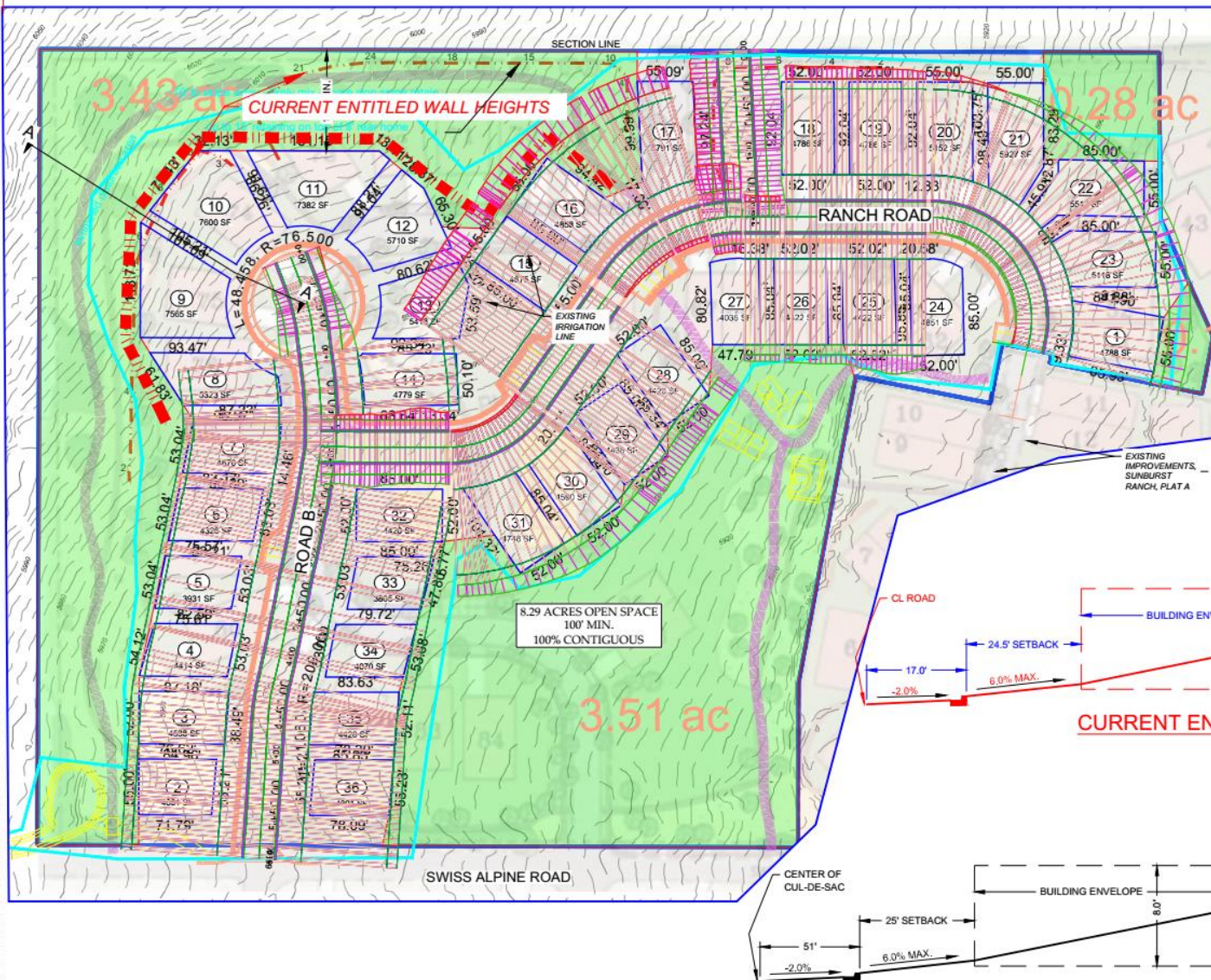
DESIGN BY: CNB DATE: 7 JAN 2010 SHEET 1
 DRAWN BY: CNB REV:

THIS DOCUMENT IS INCOMPLETE AND IS RELEASED TEMPORARILY FOR INTERIM REVIEW ONLY. IT IS NOT INTENDED FOR CONSTRUCTION, BIDDING, OR PERMIT PURPOSES.

CNS, B. BOB
 SERIAL NO. 7162790 L.A.
 DATE: 7 JAN 2010



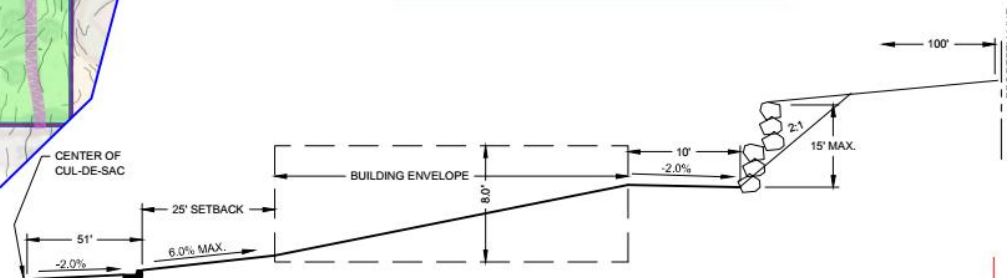
PATH: CAUBURISCASO\NEW DRIVE DOCUMENTS\BRI\CD\SSR 4-23-18.DWG



OPEN SPACE CALCULATIONS

TOTAL ACREAGE 16.33 ACRES
OPEN SPACE 8.29 ACRES
50.15%
(100% CONTIGUOUS)

CURRENTLY ENTITLED: 36 UNITS
SHOWN 33 SINGLE FAMILY UNITS



SECTION A-A

SUNBURST RANCH PHASE 3 - ENTITLEMENT
CRYSTAL SPRINGS - 376 EAST 400 SOUTH #120SLC, UTAH 84111
MIDWAY CITY, UTAH

CASCADE CIVIL, ENGINEERING LLC
1601 CASCADIA DRIVE, MIDWAY SPRINGS, UT 84045
PHONE: 801.466.8841
WWW.CASCADECIVIL.COM



JOB NO. 2018
DATE: 10/18
DRAWN BY: JMM, TMM
SCALE: 1"=50'

SHEET TITLE
ENTITLEMENT
SHEET 2 OF 2



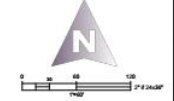
- PROPOSED - LANDSCAPE PALETTE**
- PASTURE GRASS - GRAZED OR MOVED
 - NATIVE PRESERVATION
 - EXISTING TREE STANDS TO REMAIN
 - SITE ROCK RETAINING WALL
- EACH HOME MINIMUM:**
- 30' ROCK LANDSCAPE - GRADING AND PLANT BORDER
 - 2" - 2" CALIPER BROAD LEAF FLOWERING TREE
 - 1" - 1" GRASS SHRUB - 1 GALLON
 - LAWN TYPE BETWEEN FRONT AND 10' REAR ALL HOMES
 - GRASS TO GRASS - 30' WIDE DRIVE BIRTH
- ENTRY / AMENITIES / TRAILS CORNER:**
- 30' ROCK LANDSCAPE - GRADING AND PLANT BORDER
 - 2" - 2" CALIPER BROAD LEAF FLOWERING TREE
 - 1" - 1" GRASS SHRUB - 1 GALLON
 - 30' GRASS SHRUB - 1 GALLON
- ALL WEATHER TRAIL BENCHES**
- FINAL LOCATION BY THE PROJECT HOME OWNERS / HOA, COURT TO REMAIN
- 10' SOFT SURFACE TRAIL**
- 3.5% SLOPE
 - 8" ROAD BASE OVER FIRM SURFACE
 - 6" ASPHALT SURFACE TRAIL
 - 3.5% SLOPE
 - 8" ROAD BASE OVER FIRM SURFACE
 - POLE FENCE



CASCADE CIVIL ENGINEERING LLC
 5833 CASCADE DRIVE, MOUNTAIN GREEN, UT 84050
 PHONE: 401-845-8451
 cscadenet@outlook.com



PROJECTS OVER ALL COMPARISON		
	PROPOSED	CURRENT
OPENSPACE	7.32 ACRES - 44.3%	6.9 AC - 41.7%
AMENITIES	CENTRAL	WEST SIDE
MAX WALL HEIGHT	10' GENTLE	28' VERY VERTICAL/HARSH
LOTS:	36 - ALL SINGLE FAMILY	36 - 18 OR 50% DUPLEX
PADS:	VARIETY - 52'X84	FIXED - NON-INNOVATIVE - 52'X80
ROADWAY DISTURBANCE:	197,500 SF	~308,700 SF



PROPOSED INITIAL CONSTRUCTION MODEL
 CAREFULLY MODELED (197,500 SF)

CURRENT ENTITLED - APPROXIMATE AVERAGE STEEPER (608,700 SF)

PROPOSED - 1 ENTITLED PHASE 3
 SHOWS CONCRETE AND TOP OF RETAINING WALL. SURFACE IS THE INDICATOR ABOUT THE REAL HOME VIEWS, BUT THE REAL VIEW IS IN THE 1000-2000' WEST OF THE SHED.

PROJECTS OVER ALL COMPARISON

PROPOSED

CURRENT

OPENSOURCE 7.32 ACRES - 44.3%

6.9 AC - 41.7%

AMENITIES CENTERAL

WEST SIDE

MAX WALL HEIGHT 16' GENTLE

28' VERY VERTICAL/HARSH

LOTS: 36 - ALL SINGLE FAMILY

36 - 18 OR 50% DUPLEX

PADS: VARIETY ~52X84

FIXED - NON-INNOVATIVE
~25X60

ROADWAY DISTURBANCE: 197,500 SF

~308,700 SF

STEEP - 28' WALL -
HOMES IN SHADOWHOLE



we looking into the project requirements



PROPOSED



CURRENT ENTITLED





CURRENT FIRST VIEW OF PHASE 3

AS APPROACHING JUST PAST PHASE 1

4 ft

© 2018 Google

Google Earth

CURRENTLY ENTITLED PHASE 3

ORIGINAL CONCERN WAS THE 24' RETAINING WALL SHOWN AS PINK HIGHLIGHTS ABOVE THE REAR -RIGHT HOMES, BUT THE NEAR VIEW AND LINE OF HOMES BLOCK MOST OF THE WALL



PROPOSED

SHOWN WITH ONLY ONE PRODUCT –
VARATION IN HOME STYLES RECOMMENDED –
AMMENTITES SHOWN TO THE RIGHT

4 ft

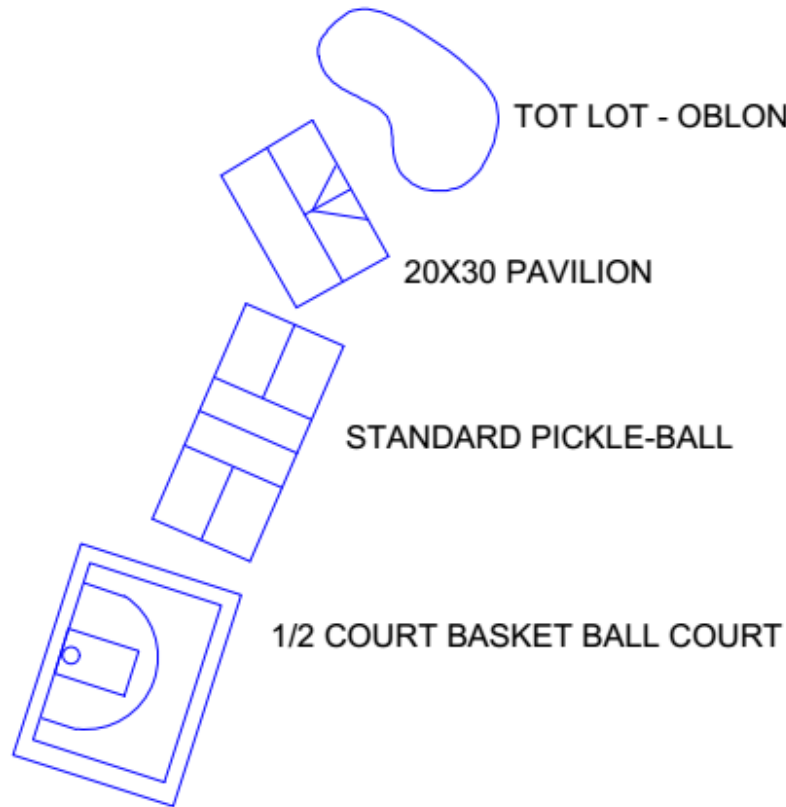
© 2018 Google

Google Earth

AMENITIES COMPARE

PROPOSED

CURRENT



TOT LOT - OBLONG 70X60

20X30 PAVILION

FULL TENNIS

FULL BASKETBALL

PROPOSED INITIAL CONSTRUCTION MODEL
CAREFULLY MODELED (197,500 SF)



CURRENT ENTITLED - APPROXIMATE
AVERAGE STEEPER (308,700 SF)



POINTS OF DISCUSSION

- Amenities
 - Current: Full tennis court, full basketball court, tot lot, and pavilion
 - Located farther from homes
 - Proposed: Pickleball court, half court basketball court, tot lot, and pavilion
 - Located closer to homes
- Open space will increase
- HOA is not in favor of the proposed amendment

POINTS OF DISCUSSION

- Amendment will have less impact on the natural environment
 - Road slopes will decrease
 - Amount of retaining walls will decrease
 - More area will be left unexcavated
- Sunburst HOA Reimbursal
 - \$55,000 required by June 14, 2021
 - \$1,000 required per building permit in phases 1 & 2
- Swiss Alpine Road Drainage



CORBIN B. GORDON, P.C.
ATTORNEY AT LAW
345 WEST 600 SOUTH, SUITE 108
HEBER CITY, UTAH 84032
PHONE (435) 657-0984 • FAX (888) 822-8796
CORBINGORDON@YAHOO.COM

September 16, 2009

Midway City Council
75 North 100 West
P.O. Box 277
Midway, UT 84049

Re: Sunburst Ranch HOA

Dear Council Member:

I represent Sunburst Ranch HOA. You are likely aware of the numerous issues facing this particular development. The HOA is on the agenda to appear before the Council on September 23, 2009. The purpose of this letter is to set forth the reasons for the appearance and the legal basis for the request that the HOA will make.

I. HISTORY OF THE DEVELOPMENT

Some history is necessary to put the HOA's request in context. The Sunburst Ranch Development was annexed into Midway City on October 17, 1997 through ordinance 97-6. Ten days later, on October 27, 1997, Crystal Springs Land and Cattle Company, Inc., the developer, entered into an Annexation Agreement For Sunburst Ranch Planned Unit Development with Midway City. A copy is attached. Steve and Bob Condie are the principals of Crystal Springs.

The infrastructure was put in place in the subdivision and the first 14 lots were built and sold. Later, Condie sold the remaining lots to a man named Jake Shoff, who resold the lots to individuals, and continued work as the builder of the remaining homes.

As the economy faltered, Shoff went bankrupt on all 16 lots, walking away from homes that were 90% complete, having done none of the drainage or landscaping. All of the homes were ultimately foreclosed on by several different banks.

The HOA board inherited the problem of no landscaping and the possibility of the flooding of these homes in the early spring of this year. I was hired in April, and we have been working diligently to resolve the issues before the snow flies.

Initially none fully understand the full scope of the landscaping problem. Through engineering analysis done by Paul Berg it was determined that Shoff left large piles of

dirt on the development that altered the approved drainage plans. Ultimately the costs to resolve these issues approached \$100,000.00.

In meetings with Condie and Shoff it has become apparent that they are not going to agree on whose fault the drainage problems are. Condie claims that he installed all infrastructure and had it inspected prior to turning the development over to Shoff. He further argues that by buying all of the remaining lots Shoff became the developer, and that it was Shoff's dirt that caused the problems.

Shoff argues that he is not the developer, and that he purchased what he was told were finished lots. He argues that the infrastructure was not appropriately installed and that the as-builts did not accurately show where the utilities were. He claims he spent hundreds of thousands of dollars digging around in the development to locate and alter the utilities to make them work with the approved plans. He claims Condie breached his contract, and that this was the primary reason he went broke on the project.

There is presently \$57,000.00 in an escrow account that both Condie and Shoff must sign to release. Through the summer neither have agreed to release it, leaving the HOA in an almost impossible situation.

In August the Condies agreed to put up \$27,500.00 to complete the grading portion of Berg's engineering plan. This left a bill of approximately \$55,000.00 to complete the drainage portion of the plan.

In August, the Mortensens, purchasers of one of the foreclosed lots, agreed to loan the HOA the \$55,000.00, but only if the City promised to enforce its Annexation Ordinance, and refuse to issue any additional approvals or building permits in phase 2 and 3 of Sunburst Ranch until "the Developer" pays back the HOA for the money spent on the grading and drainage work.

In a meeting with City officials in early August, Kraig Powell stated that the City would "enforce" its ordinance. Based on this statement the HOA proceeded to borrow the money from the Mortensens and proceed with the grading.

In the next meeting, however, Kraig expressed concern about the City's ability to enforce the ordinance and stated that it was unlikely, if Condie or Shoff sued the City, that the City Council would approve enforcement of the ordinance through litigation, due to costs. This was obviously frustrating to the HOA and particularly the Mortensens who loaned the money based on the promise the ordinance would be enforced.

As set forth below, the HOA has strong legal grounds to demand that the ordinance be enforced, and requests a promise from the City Council that no additional permits or approvals be issued on phase 2 or 3 of Sunburst Ranch until the Developer, whoever this is determined to be, pays back the HOA for its costs.

II. ANALYSIS OF THE ANNEXATION ORDINANCE

I have attached a copy of the Annexation Ordinance for your review. You will note that the City agreed to annex the property where Sunburst Ranch sits, on the conditions that the Developer, who is stated as Crystal Springs Land and Cattle Company, Inc., perform certain items outlined in the attached "Annexation Agreement For Sunburst Ranch Planned Unit Development."

Section IV of the Agreement deals with the Developers obligations. Of primary concern is Paragraph G, which states in full: "The final plans for the development shall provide for the retention on-site of the difference between the existing non-developed conditions and developed conditions for a 25 year, 24 hour storm event as shown on the Plans. Developer shall also construct an off-site storm drainage discharge line to an approved location. These features of the Development shall be constructed by Developer at Developer's sold expense." (emphasis added).

As stated above, drainage and grading issues have cost the HOA \$55,000.00 to install, and it wants reimbursed for these costs. At this point, the HOA does not care who the quote "Developer" is. For purposes of the Annexation Agreement, the Developer is Crystal Springs Land and Cattle Company, Inc., which is Condie. If Condie wants to proceed with his future phases he either needs to pay for the items he agreed to install in the Annexation Agreement or prove he transferred his development rights to Shoff.

Either way, refusing to issue any additional permits on future phases will force Condie and Shoff to resolve their issues, and will likely result in the release of the \$57,000.00 that can be used to reimburse the HOA.

Further, Paragraph B requires that the Developer install "... a secondary irrigation system to provide for all outside irrigation requirements of the Development." It states further that "No building permits shall be issued until all water distribution facilities ... are fully operational and approved by the City . . ." It has been determined that no irrigation water line exists behind Units 22 through 25. The line has been installed at a cost of approximately \$3,000.00 to the HOA, that it should be reimbursed for.

III. LEGAL ANALYSIS ON WHY IT IS ILLEGAL FOR THE CITY TO NOT ENFORCE ITS ORDINANCE

Utah municipalities are subject to the Municipal Land Use, Development, and Management Act. The Annexation Agreement, made part of the Annexation Ordinance falls within the purview of this act. Section 10-9a-802, entitled "Enforcement" establishes that "A municipality or any adversely affected owner of real estate within the municipality in which violations of this chapter occurs" may seek injunctions, or other

appropriate actions to remedy the violation, including the refusal to issue future building permits. A complete copy of the section is included in the footnote below.¹

This section establishes standing for the HOA or its individual members to seek enforcement of the existing ordinance, and further establishes that a request that no further building permits be issued without reimbursement is a reasonable request under the code.

A recent line of cases in the Utah Supreme Court establishes that failure to enforce existing ordinances can have serious consequences for both municipalities and developers.

In *Culbertson v. Board of County Commissioners of Salt Lake County*, 44 P.3d 642 (Utah 2001) the court analyzed claims under section Utah Code Ann. § 17-27-1102, which is the identical enforcement provision found in the land use code that applies to Counties, instead of cities.

In *Culbertson*, the Plaintiffs sued the Board of County Commissioners of Salt Lake for failure to enforce existing road standard ordinances. A development group named Hermes was seeking to enlarge an existing shopping center. In doing so, one of its planned buildings encroached onto an existing public street, restricting access to the Culbertson's home. Culbertson, petitioned the Board to enforce its existing road standards and a conditional use permit (CUP) that it had issued. The Board would not do so, and Culbertson sued for injunctive relief under the statute.

While the law suit proceeded, Hermes moved forward and built its buildings. Ultimately the suit landed in the Supreme Court, which held that the City had failed to enforce its existing ordinances, had illegally allowed Hermes to proceed with building within the public street, and suggested strongly that the remedy ought to be to tear down the existing buildings and restore the right of way. The court relied heavily on the fact that Culbertson had given notice of the violation and that the City had chosen to allow Hermes to proceed anyway.

¹ **10-9a-802. Enforcement.**

(1) (a) A municipality or any adversely affected owner of real estate within the municipality in which violations of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute:

- (i) injunctions, mandamus, abatement, or any other appropriate actions; or
 - (ii) proceedings to prevent, enjoin, abate, or remove the unlawful building, use, or act.
- (b) A municipality need only establish the violation to obtain the injunction.

(2) (a) The municipality may enforce the ordinance by withholding building permits.

(b) It is unlawful to erect, construct, reconstruct, alter, or change the use of any building or other structure within a municipality without approval of a building permit.

(c) The municipality may not issue a building permit unless the plans of and for the proposed erection, construction, reconstruction, alteration, or use fully conform to all regulations then in effect.

Further, in subsequent litigation, the Culbertson's attorney's fees were awarded against the City. *See generally Culbertson v. Board of County Commissioners of Salt Lake County*, 177 P.3d 621 (Utah 2008).

In accordance with the *Culbertson* case, the Lake Creek Farms HOA gives notice to Midway City that it feels it has failed to enforce ordinance No. 97-6. The HOA wants a promise that all future building permits will be denied in phase 2 and 3 of Sunburst Ranch, in accordance Utah Code Ann. § 10-9a-802(2)(a) until full reimbursement is paid to the HOA for costs incurred to comply with items set forth in the Annexation Ordinance. If future building permits are issued without receiving reimbursement, the HOA may seek injunctive relief to stop the development from going forward, as established in the *Culbertson* case, and seek recovery of its attorneys fees to bring the action.

CONCLUSION

The one issue that has been clear from the beginning of the problems in Sunburst Ranch, is that the HOA did nothing wrong. It got left with a complete mess, that it has worked diligently to clean up. The last remaining issue in this saga is the need to obtain assurance that it will recover its costs before future development is allowed. I have set forth the legal basis establishing that Midway City has a duty to enforce its ordinance. In my opinion, this obligation is clear, and will likely result in the release of the \$57,000.00 in escrow, thus solving the problem.

I am hopeful that this issue can be dealt with expeditiously in the meeting. There are high emotions concerning everything that has happened in Sunburst Ranch, this issue being one of the foremost.

I look forward to being in front of you on September 23, 2009.

Sincerely,



Corbin B. Gordon



345 West 600 South, Suite 108 • Heber City, Utah 84032
P 435-657-0984 • F 888-822-8796
WWW.GORDONLAWGROUPUTAH.COM

June 20, 2018

Robert E. Mansfield
Mitchell, Barlow & Mansfield
Boston Building
9 Exchange Place, Suite 600
Salt Lake City, Utah 84111

Re: Your letter of January 30, 2018 to Michael Henke, Midway City Planner.

Dear Mr. Mansfield:

I am the City Attorney for Midway City. Mr. Michael Henke, Midway City Planner, has referred your letter of January 30, 2018 to this office for a response.

Our reading of the CCRs that you included in your letter to Mr. Henke indicates the following:

Section 2.16 provides that the term “Plat” as used in the CCRs, includes the original Plat A. “Such term shall also include any subsequent plat or plats pertaining to all or any portion of the Additional Land as and when the same is annexed and added to the Development pursuant to the annexation provisions of Article III of this Declaration.”

Section 2.17 provides that the term “Property” shall “mean all land covered by this Declaration, including Common Areas and Lots and other land annexed to the Development as provided in this Declaration.” (emphasis added).

It does appear that the Property owner “may” “expand the Development subject to this Declaration by the annexation of all or part of the lands constituting the Additional Land.” That is permissive, as you pointed out in your letter.

However, it appears that once the property owner has decided to annex “all or part of the lands constituting the Additional Land” the following sentence also applies: “When any such annexation becomes effective, the annexed land shall become part of the Property and the Development and subject to the provisions of this Declaration and any amendment or supplement thereto. (emphasis added).

Similarly, Section 3.05 expressly states: “Declarant has no obligation hereunder to annex any Additional Land to the Development or to develop or preserve any portion of Additional Land in any particular way or according to any particular time schedule. No land other than the Property, as defined on the date hereof, and land annexed thereto in accordance with the terms of this Article, shall be deemed subject to this Declaration. . . .” (emphasis added).

Section 3.06 provides that if the original owners are not the subsequent owners of the Additional Land, the subsequent owners can still “annex all or any part of the Additional Land to the Development and subject the same to the terms of this Declaration, provided that (a) the same limitations which are imposed on Declarant under Section 3.04 of this Article III shall be applicable to Adjoining Owners; and (b) Adjoining Owners make the recordations and comply with all the other requirements referred to in Section 3.03 of this Article III.” Thus, even if there are new owners of the Additional Lands, they “may” annex and include that property under the Declaration, but only if they comply and submit to the same limitations which are imposed on Declarant under Section 3.04, and (b) make the recordations and comply with all the other requirements referred to in Section 3.03 of Article III.

Several of the requirements that must be complied with if annexation of some or all of the Additional Lands has occurred, include:

1) Any of the Additional Land that is annexed “shall become part of the Property and the Development and subject to the provisions of this Declaration and any amendment or supplement thereto.” Section 3.30

2) “All Common Areas covered by the Supplemental Declaration designated on the Plat . . . shall be conveyed to the Association pursuant and subject to the provisions of Section 5.03 of [the] Declaration.” Section 3.04(e).

It thus appears that if the owner, or any successor in interest of any or all of the Additional Lands, chooses to annex the same into the Development, they may do so. However, once they have chosen to annex, then the newly annexed portion of the Additional Land becomes subject to the CCRs, and the Common Area of the newly annexed property must be deeded to the HOA.

Therefore, to the extent some or all of the Additional Lands have or intend to be annexed into the Development, they are subject to the same terms and conditions as Plat A, including all the rights and obligations contained in the CCRs.

Additionally, the owner of Sunburst Ranch previously came before the City and amended the Master Plan in 2010. At that time, the City and the development entered into an agreement, which was recorded as Entry number 369778 with the Wasatch County Recorder.

In the Resolution memorializing the agreement, the Master Plan was amended for the entire Sunburst P.U.D., including the successive phases. That document also provided that “the terms of this Resolution and master plan amendment will be binding upon all future owners and/or

Robert E. Mansfield

June 20, 2018

Page 3

developers of any land contained within all phases of Sunburst Ranch P.U.D. The covenants and obligations contained herein shall be appurtenant to said land.” Resolution 2010-07, p. 2.

The amended Master Plan, which all of the phases are required to comply with, shows a basketball court, a tennis court, various trails and other amenities that are required to be built.

Thus, Phase III of the Sunburst P.U.D. is required to be annexed into the Sunburst P.U.D., and is subject to the Amended Master Plan, the Declaration of CCRs and all other agreements associated with that P.U.D. Further, Phase III is required to install the amenities shown on the Amended Master Plan, Phase III is required to be part of the HOA, and they are required to deed to the HOA all common areas and improvements as shown on the Amended Master Plan.

Sincerely,

Corbin B. Gordon,
Midway City Attorney

cc. Michael Henke, Midway City Planner

Sent: Sunday, June 10, 2018 8:58 PM
To: Celeste Johnson; Corbin Gordon (cgordon@gordonlawgroup.utah.com)
Cc: mhenke@midwaycityut.org ; Wes Johnson

Subject: Sunburst Ranch PUD - Phase 3 HOA Vote
Attachments: 2011-06-14 Sunburst Ranch PUD Resolution.pdf

We put the following three layout options for phase 3 of Sunburst Ranch PUD to the HOA members (32 voting lots) and we received back 30 of the 32 votes.

Below are the results:

Option (1) – 27 Votes

Option (2) – 1 Vote

Option (3) – 2 Votes

The vote was 90% for holding the developer of phase 3 to the 2010 recorded layout that all parties agreed to and the HOA, Midway City and the Phase 2 developer have all adhered to.

Please confirm back that Midway City is going to support the HOA in this decision and require the developer to fully abide by Resolution 2010-07 (attached) before the City Council approves any development of Sunburst Ranch PUD phase 3.

Option (1) – Current 2010 recorded layout for Phase 3.



Option (2) – Condies proposed layout 2017-11



Option (3) – Condies proposed layout 2018-04





Ent 369778 Bk 1036 Pl 503-509
Date: 14-JUN-2011 2:52:55PM
Fee: None Filed By: JP
ELIZABETH PALMIER, Recorder
WASATCH COUNTY CORPORATION
For: MIDWAY CITY

RESOLUTION 2010-07

A RESOLUTION BY THE MIDWAY CITY COUNCIL APPROVING AN AMENDED MASTER PLAN FOR SUNBURST RANCH P.U.D.

WHEREAS, the City Council of Midway City has received an application from Crystal Springs Land and Cattle Company to grant an amendment to the master plan for the real property development known as Sunburst Ranch P.U.D., the full legal description of which P.U.D. is attached hereto as Exhibit A; and

WHEREAS, the City Council has held numerous meetings and public hearings to discuss said request; and

WHEREAS, the Midway City Planning Commission has also discussed the requested master plan amendment and has recommended that the City adopt the proposed amendment; and

WHEREAS, a concept drawing for the Amended Master Plan is attached hereto as Exhibit B; and

WHEREAS, the City Council finds that adoption of the requested master plan is appropriate, lawful and in the public interest.

NOW THEREFORE, be it hereby RESOLVED by the City Council of Midway City, Utah, as follows:

Section 1: The master plan for the planned unit development known as Sunburst Ranch P.U.D. is hereby amended.

Section 2: The Amended Master Plan of Sunburst Ranch P.U.D. shall be as set forth on the drawing attached hereto as Exhibit B and as set forth in the terms of this Resolution.

Section 3: Lot 15 will remain in Phase 1 of the development.

Section 4: Phase 3 of the development will contain 36 units.

Section 5: The total number of units in all three phases of the development is 86.

Section 6: The total combined size of all phases of the development is 29.87 acres, with 17.10 acres of open space.

Section 7: All roads in the development will be private, except for the road known as Olympic Road, which will be public.

Section 8: All water shares and/or water rights required for all units and all phases of the development have already been tendered to and accepted by the City.

Section 9: This master plan amendment does not affect any proceedings that have previously occurred regarding Phase 2 of the development except as explicitly stated herein.

Section 10: The developer of Phase 3 will be required to submit applications for preliminary and final approval of Phase 3 for processing according to standard City procedures, and pursuant to the terms of this amended master plan approval, at the time development of Phase 3 occurs. Development and construction in Phase 3 will be subject to all building and construction standards of the City in effect at the time final approval of Phase 3 is granted.

Section 11: Crystal Springs Land and Cattle Company ("Crystal Springs") will pay to the Sunburst Ranch Owners Association the amount of \$55,000.00 to reimburse said Association for certain costs of grading and drainage improvements installed by the Association in the development during 2009. Crystal Springs shall cause this reimbursement to be made by paying to the Sunburst Ranch Owners Association the amount of \$1,000.00 at the time each building permit for a unit in Phase 2 and/or Phase 3 is issued by the City; provided, however, that upon the expiration of ten (10) years from the approval and execution of this resolution approving the amended master plan, Crystal Springs shall be required to pay, in one lump sum, any remaining portion of the \$55,000.00 to the Association that has not to that point already been paid. The requirements of this paragraph are explicitly made binding upon any future owner and/or developer of any property included in the proposed Phase 3 of Sunburst Ranch P.U.D. Upon passage of this Resolution by the Midway City Council, Crystal Springs shall cause to be dismissed the Complaint and Petition for Review, Case Number 090500525, filed October 22, 2009 in Fourth District Court, Wasatch County, Utah. Crystal Springs voluntarily agrees to the requirements of this paragraph, and all other terms of this resolution, as evidenced by the signature of said Company at the end of this Resolution.


Section 12: The terms of this Resolution and master plan amendment will be binding upon all future owners and/or developers of any land contained within all phases of Sunburst Ranch P.U.D. The covenants and obligations contained herein shall be appurtenant to said land, and this Resolution shall be recorded in the office of the Wasatch County Recorder.

Section 13: Pursuant to Midway City ordinances and policies, the developer of any phase and/or units of Sunburst Ranch P.U.D. shall pay all applicable City fees and charges, including but not limited to the costs the City incurs in processing and reviewing all development plans and applications, including engineering, legal and other professional and consultant fees. As a condition precedent to this resolution, all such fees and charges shall be paid current.

Section 14: All property in all phases of Sunburst Ranch, whether developed or undeveloped, shall be kept clear of weeds on a year-round basis by spraying, revegetating or mechanical clearing so that the height of any weed vegetation does not exceed six inches. For any particular parcel of real property, the responsibility of complying with this paragraph shall rest with the owner of said real property.

PASSED AND ADOPTED by the Midway City Council the 10th day of February, 2010.

Midway City



Connie Tatton, Mayor

ATTEST:



Brad Wilson, Recorder



AGREED to by CRYSTAL SPRINGS LAND AND CATTLE COMPANY:

Steve R. Condie (signature)

On the 7th day of June, 20 11, the foregoing document was signed and acknowledged before me, a notary public, by Steven R. Condie, whose identity is known to me or was proven by satisfactory evidence, in his/her capacity as _____ of Crystal Springs Land and Cattle Company.

Joan F. Swain
NOTARY PUBLIC

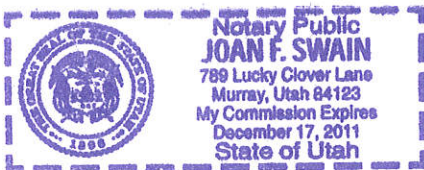


EXHIBIT A

All of the real property described as follows:

All of Units 1 through 30 and Unit 35, Sunburst Ranch P.U.D. Plat A Amended, as recorded January 5, 2005, as Entry Number 278595, in Book 730, Pages 346-355, Official Records, Wasatch County Recorder

and

Beginning at a point which is N 89°48'58" W 792.46 feet along the Section li and S 25°03'31" E 391.36 feet from the Wasatch County Survey Monument marking the Northeast corner of Section 33, Township 3 South, Range 4 East Salt Lake Base and Meridian and running thence:

S 25°03'31" E 316.24 feet to a point on the North line of Swiss Alpine Road; thence along said North line the following 5 courses:
 S 89°56'36" W 513.15 feet to a point of curvature with a 175.00 foot radius curve to the left (long chord bears S 69°23'26" W 122.87 feet); thence Southwesterly along the arc of said curve 125.55 feet through a central angle of 41°06'19"; thence S 48°50'16" W 106.70 feet to a point of curvature with 125.00 foot radius curve to the right (long chord bears S 69°31'17" W 88.30 thence Southwesterly along the arc of said curve 90.25 feet through a central angle of 41°22'02"; thence N 89°47'42" W 350.01 feet; thence N 00°12'18" E 162.36 feet; thence N 10°30'46" E 308.87 feet; thence S 78°36'03" E 135.86 feet; thence N 11°23'57" E 60.16 feet; thence S 78°36'03" E 50.00 feet; thence S 11°23'57" W 9.32 feet; thence S 78°36'03" E 202.28 feet; thence N 89°56'36" E 340.43 feet; thence N 00°03'24" W 27.80 feet; thence N 64°56'29" E 50.00 feet; thence S 25°03'31" E 126.64 feet; thence N 64°56'29" E 133.00 feet to the point of beginning.

and

BEGINNING AT A POINT WHICH IS NORTH 89°49'52" WEST 792.47 FEET FROM THE NORTHEAST CORNER SECTION 33, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN
 THENCE SOUTH 25°02'02" EAST 391.36 FEET;
 THENCE SOUTH 64°57'58" WEST 133.00 FEET;
 THENCE NORTH 25°02'02" WEST 126.64 FEET;
 THENCE SOUTH 64°57'58" WEST 50.00 FEET;
 THENCE SOUTH 00°01'55" EAST 27.80 FEET;
 THENCE SOUTH 89°58'05" WEST 340.43 FEET;
 THENCE NORTH 78°34'34" WEST 49.17 FEET;
 THENCE NORTH 11°25'26" EAST 57.36 FEET;
 THENCE NORTH 24°04'59" WEST 127.63 FEET;
 THENCE NORTH 01°16'17" WEST 70.88 FEET;
 THENCE NORTH 00°12'31" EAST 93.70 FEET;
 THENCE SOUTH 89°47'29" EAST 484.36 FEET TO THE POINT OF BEGINNING.

and

BEGINNING AT A POINT WHICH IS NORTH 89°48'58" WEST 1276.82 FEET ALONG THE SECTION LINE FROM THE WASATCH COUNTY SURVEY MONUMENT MARKING THE NORTHEAST CORNER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN;
 AND RUNNING THENCE SOUTH 00°11'02" WEST 93.70 FEET; THENCE SOUTH 01°17'48" EAST 70.88 FEET; THENCE SOUTH 24°06'28" EAST 127.63 FEET; THENCE SOUTH 11°23'57" WEST 57.36 FEET; THENCE NORTH 78°36'03" WEST 153.11 FEET; THENCE NORTH 11°23'57" EAST 9.32 FEET; THENCE NORTH 78°36'03" WEST 50.00 FEET; THENCE SOUTH 11°23'57" WEST 60.16 FEET; THENCE NORTH 78°36'03" WEST 135.86 FEET; THENCE SOUTH 10°30'46" WEST 308.87 FEET; THENCE SOUTH 00°12'18" WEST 162.36 FEET TO THE NORTH LINE OF SWISS ALPINE ROAD; THENCE NORTH 89°47'42" WEST 741.83 FEET ALONG SAID LINE TO THE EASTERLY BOUNDARY OF SWISS MOUNTAIN ESTATES NO. 1; THENCE NORTH 00°33'20" WEST 787.12 FEET ALONG SWISS MOUNTAIN ESTATES SUBDIVISION TO THE SECTION LINE; THENCE SOUTH 89°48'58" EAST 1106.63 FEET ALONG SAID SECTION LINE TO THE POINT OF BEGINNING.

PARCEL NUMBERS

Sunburst Ranch PUD, Plat A Amended, Units 1-30 and 35

1. 00-0016-8406	9. 00-0016-7473	17. 00-0016-7556	25. 00-0016-7630
2. 00-0016-7408	10. 00-0016-7481	18. 00-0016-7564	26. 00-0016-7648
3. 00-0016-7416	11. 00-0016-7499	19. 00-0016-7572	27. 00-0016-7655
4. 00-0016-7424	12. 00-0016-7507	20. 00-0016-7580	28. 00-0016-7663
5. 00-0016-7432	13. 00-0016-7515	21. 00-0016-7598	29. 00-0016-7671
6. 00-0016-7440	14. 00-0016-7523	22. 00-0016-7606	30. 00-0016-7689
7. 00-0016-7457	15. 00-0016-7531	23. 00-0016-7614	35. 00-0016-7739
8. 00-0016-7465	16. 00-0016-7549	24. 00-0016-7622	

Parcels

00-0007-5767
00-0016-7366
00-0016-4256
00-0012-1306



Sunburst Ranch Owners Comments about the Condies Proposed Amendment to the Binding 2010-07 Resolution.

The Sunburst Ranch OA Board asked each owner in Sunburst Ranch Phase 1 and 2 (34 home) for their comments regarding the Condies attempting to amend the 2010-07 resolution no matter if they are for or against the proposed amendment.

We told them that all comments would be submitted to the City Council anonymously but with completely unaltered content. Other than fixing some spelling mistakes we have included those comments below.

Some members have had dealings with Condie and the City that were not pleasant and their comments are rather blunt, the board's intent was not to offend anyone.

The Condies have claimed there is only one or a couple of members that are against them and are unfairly trying to stop the Condies from amending the approved master plan, the comments below put that statement to rest.

It should now be crystal clear the home owners of Sunburst Ranch and citizens of Midway City do not want any changes to the 2010-07 Resolution and do not feel the proposed changes offer Midway City any improvements from the 2010-07 Master plan as currently approved.

Note: When the owners reference "Option 1" they are referring to the vote that was held in 2018 and Option 1 is the current 2010-07 resolution layout. (Option 2 and 3 are two different layouts that Condies proposed one of which is the current proposed layout the Condies are pushing)

I, xxx, homeowner of lot xxx in Sunburst Ranch do not agree with Condie's proposed changes to phase 3 of Sunburst Ranch. We were promised a city approved master plan with required amenities and open space. Although Condie's modified and proposed plan still includes the required open space and amenities, the layout has no benefit to current home owners and only benefits the developer and new home owners of phase 3.

The open space is useless to the current owners and only benefits homeowners in the proposed phase 3 by allowing larger lots and more open space around each home. The required amenities are shoved in a small corner of the community and are not easily accessed and will most likely cause increased noise for certain home owners.

As a homeowner who has resided in Sunburst Ranch for 10 years, I have witnessed many issues that existed in Sunburst Ranch due to lax enforcement of rules and guidelines on the developer. I feel our neighborhood has resolved and recovered from most of these early violations and currently sits in a good position. I would hate for Midway to roll over (once again) due to developer pressure and to someone with connections that run deep. By accepting the proposed modifications to the approved 2010-07 approved master plat, it does nothing to benefit those that actually live in the community and want what is best for the neighborhood - the developer does not live here and only has his best interests in mind.

Please reject the proposed modification of the approved master plat for Sunburst Ranch and stand your ground and support those that actually live there and want to reap the benefits of what Midway city previously promised.

I purchased in Sunburst for many reasons... one of which is the inclusion of a park, tennis courts etc... as laid out in the existing plan. Any change from that by the city council is in my opinion a

sign of dishonesty on the part of our elected leaders to allow profits over people. Once approved these plans should not change without specific reasons that improve the outcome for the local citizens. The proposals as I understand it are for selfish reasons only. Change to this plan for any other reason is unacceptable and will result in legal action to compensate for any future impacts to home values.

I was distressed to learn that the proposed plan for Sunburst Ranch was still in discussion. The community took a vote in the summer of 2018 regarding the three plans. The overwhelming vote by the residents was for Option 1 which was the original master plan we purchased the property. We were heavily influenced on the purchase of this property due to this proposal which contained open space and some recreational structures.

I am writing to strongly urge the adoption of Option 1. Mr Condie does not live in Sunburst Ranch and it appears to me that the purposes of his plans are solely based on a monetary gain for him and not for the desires of the residents who live in this community. I find it at the least deceptive, and at most criminal that there would be any changes made to the original plan for this development.

I hope that this situation can be resolved sooner than later and resolved in favor of the owners of the property who reside and enjoy the property as originally designed and whose interest lies in Option 1. Please put yourselves in the shoes of the homeowners and realize that they are the ones you should be representing.

When I bought my unit, several years ago, I immediately wondered why there was so little open area and green space in the development. Then I was told that the developer responsible for our project was going to include these amenities in his phase 3(Condies) development. I have been anxiously awaiting these open areas and park as described in the original project, especially so the children in the area have somewhere to play outside and to have a pleasant area to walk in. I am totally opposed to any modifications to the master plan, let wealthy developers who make promises in order to get projects approved, keep their promises! The HOA has my total support to oppose these changes and to take whatever action is necessary to have these developers comply with what they have signed up to originally and promised the home owners in this development.

When we purchased our home in Sunburst in 2018, we understood that there would be another development. We knew that the development would include walking trails and other amenities close to our property. This was a big factor in our choosing to purchase the property. We hope that the City Council will honor the existing agreement.

When our family purchased our home in Sunburst Ranch, promises were made by the Condies that amenities and green space, as noted in documents approved by the Midway City representatives, would be provided in Phase 3. These were legal commitments which encouraged us to commit a large sum of money to purchase a residence in Sunburst Ranch. Such amenities and green space, both with reasonable access, impact both the value of the residence and the quality of life in Sunburst

Ranch. Unfortunately, what is now being proposed by the Condies is far inferior to what was promised and is not acceptable. We expect the Condies to uphold their word as we expect elected representatives of the Midway City to do so also. If one does not live by legal commitments as well as their word, what value is there in a contract or for that matter a man's word? If contractual promises are not upheld, such as the 2010-07 plan, we would encourage the Sunburst Ranch HOA to pursue aggressive legal action

We are homeowners that live year-round in the Sunburst Ranch development. Critical factors in our decision to purchase a primary residence in Sunburst Ranch were (i) the layout/integration of Phases I, II and III, and (ii) the exceptional quality of the well-designed Phase III open space – both clearly illustrated in the binding 2010-07 Sunburst Ranch PUD master plan. In particular, the quality of the open space area with planned amenities is exceptional given the following aspects:

- Open and large park-like setting that is centralized and well isolated from the Phase III homes (similar to the community/city park area at the Valais development);
- Easily accessible for the entire community (including disabled individuals) from three designated parking areas that are located very close to the amenity area;
- Located on the west side of Phase III with the higher elevation providing spectacular views of the Heber Valley and the mountains to the northeast of the development;
- Relatively flat space that is useable for other recreational activities such as soccer, volleyball, football, etc; and
- The development entrance from Swiss Alpine Road provides a spectacular view corridor of the open space and to the mountains behind the Phase III development.

Please contrast these aspects with the quality of the open space indicated in the proposed amendment. The exceptional amenity area in the binding 2010-07 Sunburst Ranch PUD master plan has been re-purposed for construction of new homes, open space has been decentralized behind homes on the periphery of Phase III, and the exceptional amenity area has been reduced in size and relegated to difficult to access backyards of existing Phase I homes and future Phase III homes. The proposed amendment is ill-conceived in many ways. For example, pickle ball is a high decibel sport. Has anyone considered the noise conflict as the sound waves bounce off the vertical planes of the close surrounding homes? It's clear that the amenity area is being accommodated in the proposed amendment only because it is necessary to meet previous commitments made to the City and Phase I and II homeowners.

Any and all benefits from the proposed amendment to the binding 2010-07 Sunburst Ranch PUD master plan solely benefit the current Phase III land owner and will most likely negatively impact Phase I and Phase II property values due to the significantly reduced quality of the open space. In a nutshell, the proposed amendment to the binding 2010-07 Sunburst Ranch PUD master plan provides the heart of the watermelon, previously committed to all Sunburst homeowners, to the Phase III land owner.

I recently learned that Midway City is considering a Phase 3 proposed amendment to the binding 2010-07 PUD master plan. You'll recall that our resident HOA community took a vote in the summer of 2018 regarding three plans under consideration and Option 1 was overwhelmingly preferred. It contained an awesome layout including a desirable park, amenities, open space and some recreational structures.

I am concerned that Midway City government is being strong-armed by a relentless developer to overturn the Option 1 decision through this amendment. Mr Condie, who does not live in Sunburst Ranch, appears to be purely driven by the opportunity for personal monetary gain and is totally insensitive to the desires of existing Sunburst Ranch residents. The Midway Mayor and city council members should be wary of this continuing subterfuge and less-than-subtle effort to overturn the will of the community homeowners who were promised something completely different than the proposed amendment.

I have faith in the integrity of local government armed with indisputable facts, and trust that you will appropriately and finally resolve this matter in favor of the Sunburst Ranch property owners. Your duty is to represent the will of the people living in Midway, and in so doing, you must confirm the pre-eminent priority of Option 1 under the 2010-07 master plan. Thank you for your worthy efforts to do what's right, not what's best for a special interest.

I strongly objects to the amendment presented. The park, amenities and open space outlined in the original 2010-07 master plan is what must be adhered to.

We just recently moved to Sunburst Ranch, we read the 2010-07 master plan and that is one of the main reasons we went through with our purchase during this crazy Covid 19 time. The layout of the community, the easy access to the park and amenities was a huge draw for us, this is what the Midway life is about! Only after closing did we find out about this debacle, we were saddened and thought oh no this is turning into the Salt Lake Valley. Please uphold the Midway way of life we have looked forward to for so long.

We are against any amendments to the agreed upon 2010-07 resolution for Phase 3. At that point in time, we as an existing homeowner made significant concessions that were predicated upon the completion of Phase 3 as proposed in the 2010-07 resolution. We strongly support the idea that all parties to the resolution should keep their word and follow through with the legal commitments they have already made. As each party does this Sunburst Ranch will offer a wonderful setting to live within the beautiful city of Midway.

We bought a home in Sunburst Ranch in the summer of 2014. At that time we saw the future plans for Sunburst Ranch phase 3, the 2010-07 version. This was a big draw to us in buying in this area and feel that this is what was promised to us if any further development takes place. We have once again reviewed all the proposed plans and the only one that is acceptable to us was the original 2010-07 version that we initially saw. We feel strongly that this should be the only approved plan for this subdivision as this is what was agreed upon. Please turn down all other proposals.

I Expect the Midway Planning Dept. to support the wishes of the homeowners of Sunburst Ranch as per the layout options #1 for Phase 3 that they chose. I purchased my home in 2009 with the understanding Phase 3 would have walking trails, open spaces, etc. I am opposed to the amendments and fully expect the 2010-2017 master plan to be binding.

We have lived in Sunburst Ranch since 2006. Shortly after we bought our home the Condies sold the Phase 1 to developers who were able to change the entire neighborhood by building houses closer together and lower quality then the neighborhood when we bought our home. This was a disappointment; we bought here because we assumed it would be like the plot map shown us in 2006. In 2018 we voted for the 2017-07 Sunburst Ranch PUD Master Plan in the hopes it would be an assurance that our neighborhood and HOA would finally be a plan that would assure us of a neighborhood with no more surprises and disappointments in its development. I do not understand the uncaring attitude of the Condie's and their thinking that every time the demand for housing and their greediness they think they should be able to disregard their promise and legal bindings to our neighborhood and HOA. We are all very proud homeowners here and hope that you understand the current homeowners very justified feelings.

There seems to be no logic to accepting a change to the original plan. No improvement is offered to us and considerable advantage to Mr Condie. Furthermore, it encourages potential "bait and switch" precedent throughout the valley during this period of growth.

When we purchased our home, we were promised a walking trail and trees on the property behind our home. The proposal is to place a pickle ball court right behind our home. That changes the value and enjoyment of our home in a very negative way. The City Council and the developer would literally be robbing us. Nobody would want to live with a pickle ball court in the backyard. Please honor the existing agreement.

The plan looks much better.

We would like a swing and slide playground area. A park. Well kept open spaces, and community fire pit.

I am writing in response to the issue at hand with the promises made to us as Property owners and residents of Midway.

Our home is in the area of Sunburst Ranch and we were told that because we allowed high density to be built out we would in return be given a wonderful area for our families to enjoy. Some open space with amenities to enjoy with parking provided..

I am right in the area that is definitely effect by this high density area.. and though this is so disappointing for us as we wanted to be able to not have to be staring into another families home..

But, now they want to change out their original plans and not fulfill their end of the agreement.

I did not know that it is possible that someone who gave their word could simple go to you our City Council and get it changed to what meets their wants now!
In my world, your word means something!
And they should have to stand by their word.

When I purchased my home, one of the big selling points was the future development of the 2010-07 Sunburst Master Plan with it's park amenities and open space. It is my desire & expectation that this plan will be upheld in the 2018 version. The amenities as the Condies are proposing is not acceptable to me.

I moved into Sunburst in 2006 and like many others looked at the projected plans and wanted to join a community with a positive future. We have lived here for 14 years (14 years) and have lived and owned property in Midway for 22 years.

1. **First conflict was the sale of the lots to another builder, changes to the overall HOA plans and the bankruptcy of the builder leaving the homes unfinished.**
2. **Next was the conflicts with the incoming homeowners on HOA standards etc. which lead to a lot of conflict between the old and new neighbors.**
3. **Next was the conflict of the drainage and having to redo the grading, etc. Homeowners had to come up with funding which will eventually be paid back.**
4. **Next was the conflict with on lot at eventually was built blocking views, etc.**
5. **Now we have a conflict with the plans for the last Phase and promises made are being changed again.**

I am 80 years old, a veteran and hopefully a long and loyal Midway resident and would like to see promises made to me kept. I hope the council will take the above as an honest assessment of our history and do the right thing. I have lived thru all these conflict which all lead back to the plans for the HOA and promises made to it Homeowners.

We can confirm that one of the main decision factors with our property purchase was the PUD Master Plan and its amenities. We feel a reduction to this plan will have a negative impact on the valuation of our property that is not acceptable.

We favor leaving the development plan as promised at the time of our purchase.

When we moved to Sunburst Ranch a year and a half ago we carefully researched the HOA and master plan. We knew what we were getting and were happy with it. We are now very disturbed that it is all being threatened. We do NOT want any changes to occur. We do NOT want a sporting facility right behind our retirement home. We chose our location because it was quiet and peaceful. We do NOT want continuous construction traffic. We are actually unhappy these changes are even being considered. We want to keep what we paid for, NOT what someone later thinks we should have. We want to keep the 2010-07 Sunburst Ranch PUD master plan.

I am very concerned about the amendment presented by the Condies for Sunburst Ranch Phase 3 for the following reasons:

1. I purchased my home based on the 2010-07 master plan.
2. Phase 3 is directly behind my home. Soil stability, slope and water runoff are potential problems.
3. Any plan that shortcuts on open space and planned amenities is not acceptable.

Please take the time to consider this matter carefully. Thank you.

Our thoughts on the matter of Mr. Condie's proposal to renege on his 2010 commitment to both the City of Midway and to the HOA are that Mr. Condie has demonstrated that he is not honorable and cannot be trusted to act in the best interests of anyone other than himself. Having once used litigation to resolve his disagreements with the HOA, which was resolved by entering into an agreement with both the HOA and Midway City, Mr. Condie has discovered that the development plan approved through that agreement is not to his liking. He apparently has discovered that an alternative plan would allow him to realize more monetary returns on the development of the real property to be included in Phase III of the Sunburst development, and wants another bite at the proverbial apple. As a result, notwithstanding the clear and unequivocal language of the 2010 settlement agreement, and it's attached plan, he has yet again instituted litigation to bully the HOA and it's members into capitulating to his demands. Enough is enough. We don't understand why Midway City would even countenance such tactics. When is the City going to find it's backbone?

As owners of a home in Sunburst Ranch, who bought that home with the benefits and amenities included in the 2010 approved plan in mind, we are infuriated that Mr. Condie would renege on his commitments, and attempt to enrich himself again at the expense of the HOA and its members. We are also unhappy that Midway City continues to entertain alternative proposals from Mr. Condie. The fact that Mr. Condie is willing to litigate with anyone who disagrees with his interests does not detract from the fact that he has made binding commitments to the HOA and it's members, on which those members have relied. Midway City should stand by it's residents located in Sunburst Ranch, and it's own commitments to the HOA as represented in the 2010 settlement, and tell Mr. Condie that his attempts to draw others to the table through threats and litigation will not work to his benefit.

We implore Midway City to stand it's ground and to honor and enforce the 2010 settlement agreement, and the attached development plan. It is what was agreed to in 2010, and has been part of the public record since. It is what we, as residents of Midway City have relied on, and is also what is right. The mere fact that Mr. Condie has determined to be unworkable and litigious doesn't change that.

History of Sunburst Ranch PUD

4/13/97 – Midway City Council Meeting

Council approves ordinance 97-2 Open Space resolution for PUDs. (Requiring PUDs to have 50% open space)

Arlin Kohler reports on Sunburst Ranch proposal, “He reported the project had started out with 106 units and are now down to 94 but the Planning Commission were asking for still less.”

5/1/97 – Midway City Council Meeting

Arlin Kohler reports on Sunburst Ranch proposal, “... that started with a density of 106 units and is now down to 86. He reported the Planning Commission is split on the density/open space versus subdivision issues.”

8/21/97 – Midway City Council Meeting

Swiss Alpine Road Discussion: “It was reported that Mr. Condie will solve the runoff issue from the Swiss Mountain Estates by capturing this runoff into the upper end of his development.”

9/4/97 – Midway City Council Meeting

Public Hearing to Receive Comments on the Proposed Sunburst Annexation:

“Bob Condie, developer, explained the proposed 30-acre development located north of Swiss Alpenhof on Swiss Alpine Road that would consist of 86 units. These units would be single and dual family units ranging in size from 1400 to 2800 sq. ft.”

“Bob Condie explained the runoff water problem from Swiss Mountain Estates and his proposal to divert the water into a catch basin on the west edge of the property.”

1/15/98 - Midway City Council meeting

Bob Condie explains the water runoff problem with Swiss Mountain Estates development to the west and how by installing culverts, etc. the drainage would be utilized on his project.

He further explained the units will be built on pads that will be maintained by the Homeowner's Association. (**Singular**)

3/19/98 – Ordinance 97-6 (The Sunburst Annexation)

Approves “... Developer to develop 86 equivalent residential units ...”

References to **ONE** “Owner's Association”

Requires runoff to “... provide for the retention on-site ...”

9/23/98 – Plate “A” Sunburst Ranch is approved (Phase 1)

Approved by the Midway City Council with less than 50% open space with the promise from the developer that Phase 3 would cover the open space required for Phase 1.

9/23/98 – CC&Rs Created and recorded

Condies record the first CC&Rs written by the Condies and for the Condies.

***** Article III (Property Description and Annexation) sections 3.01 (Reserving unto Declarant), 3.03, 3.04 and 3.05, that state the developer does not have to add the additional land (Phase 3) to the development is void based on the annexation agreement, articles of incorporation and the approval of Plate A and B by Midway City along with the 2010-07 resolution.**

(It is no more enforceable then if the developer put in his CC&Rs that homes in Sunburst Ranch can be 40' tall)

10/06/99 – CC&Rs Amended and recorded

Condies left in Article III (Property Description and Annexation) sections 3.01 (Reserving unto Declarant), 3.03, 3.04 and 3.05, which are still void.

11/8/99 – Articles of incorporation Sunburst Ranch Homeowners Association.

Condies create Sunburst Ranch OA specifying a single HOA for the entire PUD.

“Lots 1 through 86, inclusive, SUNBURST RANCH, according to the official plat thereof, as recorded in the office of the Country Recorder of Wasatch County, Utah.”

8/10/04 – CC&Rs Second Amended recorded

Condies left in Article III (Property Description and Annexation) sections 3.01 (Reserving unto Declarant), 3.03, 3.04 and 3.05, which are still void.

1/5/05 – Plate “A” Sunburst Ranch is amended (Phase 1)

Four of the doubles are converted to larger singles, still leaving less than 50% open space with the promise from the developer that Phase 3 would cover the open space required for Phase 1.

9/25/06 – Real Estate Purchase Contract between Condie and Shoff

A new home builder Jake Shoff purchases several building sites. (Not the development)

“Property: Sunburst Ranch Phase 1 PUD **Pad Sites #22 #23 #24 #25 #26 #27**”

9/17/08 – Midway City Planning Commission Meeting

SUNBURST RANCH PUD, MASTER PLAN AMENDMENT (Will become 2010-07 Resolution)

Developer Bob Condie and Berg Engineering have submitted an application to amend the Master Plan of Phase 3 of the Sunburst Ranch PUD.

“3. The proposed phase 3 Master Plan amendment is **actually creating more usable open space**, as several amenities are being proposed in the **middle** of phase 3, while at the same time retaining sufficient open space on the west side of the development with a trail. The overall amount of open space still complies with the current PUD regulations.

There are 16.90 acres (**56.6%**) in the current proposed Master Plan. The total size of the development is just less than 30 acres (29.87)."

"After the motion (to approve) was made, developer **Bob Condie stated that he was very happy with the proposal**, which was worked out between the HOA and the development group. HOA president Greg Lupus echoed these sentiments, and expressed gratitude to City staff, the neighbors, and the Condies for the agreement that had been reached."

10/8/08 – Master Plan Amendment, Phase 3.

"The proposed phase 3 Master Plan amendment is actually creating more usable open space, as several amenities are being proposed in the middle of phase 3, while at the same time retaining sufficient open space on the west side of the development with a trail."

"After the motion was made, developer Bob Condie stated that he was very happy with the proposal"

4/22/09 – City Council Meeting Staff Report

Bob Condie and Berg Engineering have submitted an application to amend the Master Plan of Phase 3 of the Sunburst Ranch PUD. Following are key points of the note from this application:

6. The applicant **and the Home Owners Association** have reached an agreement as to the layout and street pattern for Phase 3, which will move the units upslope and away from the existing units.

7/24/09 – Letter from Condies to Corbin Gordon (Sunburst Ranch OA)

Condies state that they would front \$62,000.00 to Sunburst Ranch OA to complete the required drainage work and Sunburst Ranch OA would then immediately levy an assessment against the homeowners to repay Condies.

9/17/09 – Letter from Corbin Gordon to Midway City

Corbin Gordon was the Sunburst Ranch Association attorney at the time.

*** This letter is included with your packet.

12/16/09 – Midway City Planning Commission Meeting

Master Plan Amendment, Phase 3, Resubmitted

"2. Phase 3 will now contain 35 units, 3 units up from the original 32 units in the Master Plan from 1997. However, the overall number of units in all phases of the development is not changing from the 86 that were originally approved."

3. The overall amount of open space still complies with the current PUD regulations. There is not 17.10 acres, (**57.25%**), compared to 16.90 acres in the 2008 plan, in the proposed Master Plan now before the Planning Commission."

9/4/09 – Email from Kraig Powell to a Sunburst Ranch home owner

Response from the Midway City Attorney to a home owner threatening to sue the City for not holding the Condies accountable.

“My ‘reluctance to litigate’ is based solely on the fact that I believe litigation should always be the last resort and should be avoided whenever possible. Litigation is extremely expensive, rarely produces good results, and creates bad feeling that last for generations, thereby often production additional destructive disputes and litigation over the course of the years.”

“As to your question about how the City will protect against these sorts of problems in the future: I am comfortable that current City Staff and City procedures are sufficient to **safeguard the interest of the Midway citizens for future development applications**. As I stated to you, this project originated well before any of our tenures. We have thoroughly reviewed the unfolding of this project and believe that we have new policies and procedures in place to assure more positive outcomes in the future.”

Sunburst Ranch OAs view of this is that these are word to live by and we fully expect the City Council to hold the Condies to the binding 2010-07 resolution as promised by Midway City.

9/23/09 – Midway City Council Meeting

Enforcement of Sunburst Ranch Annexation Agreement.

Jennifer Brown, counsel for JWS Construction, mad the following comments:

- . There was only a real estate purchase contract between JWS Construction and Crystal Springs. No other rights or obligations were transferred with the sale.
- . Some portions of the annexation agreement had not be complied with.
- . The landscaping was incomplete when JWS Construction purchased the units.
- . JWS Construction did not assume any of the develop’s responsibilities.

Council Member Huggard thought that JWS Construction assumed the responsibility for the landscaping when it purchased the property. Ms. Brown responded that the project was a PUD and JWS Construction only purchased the pad and not the surrounding land that included the landscaping.

Council Member Thacker asked Ms. Brown if JWS Construction bought the units as fully buildable. Ms. Brown responded that the units were represented to JWS Construction as fully buildable.

Council Member Huggard moved that the Council direct the City attorney and City staff to take all appropriate action to enforce the Sunburst Ranch Annexation Agreement and Ordinance against the responsible parties, including, but not necessarily limited to, withholding land use approvals and building permits in future phases of Sunburst Ranch. He further moved that the specific enforcement action of the City attorney and City staff shall first be presented to the City Council, either in open or executive session, for review and approval by the City Council.

The motion was seconded and passed by majority vote.

10/22/09 – Condies file suit against Midway City (Case 090500525)

Midway City Council on 9/23/09 votes to withhold issuing building permits to Crystal Springs (Condies) on future phases until the Condies finish the common area development of Phase 1 as required by the Plate “A” agreement.

Condies sue to stop Midway City from following the City Councils decision.

2/10/10 – Midway City Council Meeting

Resolution 2010-07, Amended master plan for Sunburst Ranch PUD.

Michael Henke made the following comments regarding the master plan amendment:

“It moved the open space to the center of Sunburst Ranch where it would be more usable.”

“A majority of the homeowners and the Crystal Springs Land and Cattle Company had agreed to the settlement.”

Mr. Henke said that the agreement was good for all parties and recommended the amendment.

Randy Mortensen, Sunburst Ranch HOA President said that he and the Sunburst Ranch HOA Board supported the resolution so long as it was enforced.

Condie writes supporting the phase 3 layout “as submitted”.

Mayor Tatton reported that “she reached an agreement with Bob Condie regarding the repayment of money to the homeowners’ association (HOA) for improvements. She said the HOA also accepted the agreement”

Council Member Ashton asked who would enforce the resolution. Mayor Tatton responded that the City would enforce it when a building permit was issued.

Midway City Council approves Resolution 2010-07.

2/16/10 – Condies ask for Voluntary Dismissal of their suit (Case 090500525)

Upon Midway City Council approving Resolution 2010-07 relieving the Condies from finishing Phase 1 of the PUD the Condies dismissed their suit against Midway City.

4/11/11 – Letter to Condies regrading Resolution 2010-07

Kraig Powell (Midway City Attorney) writes “The resolution by which the amended master plan was enacted requires that your client sign to ratify it. A copy of the resolution is enclosed for you reference. **Despite repeated requests**, the City has been unable to obtain your client’s signature on the resolution.”

The 2010-07 resolution was approved and signed by Midway City on 2/20/10 so it has been 14 months the City has been trying to get the Condies to sign it.

4/26/11 – Letter to Condies regarding Resolution 2010-07 2/10/10

Kraig Powell again writes to the Condies to have them sign the 2010-07 agreement.

“You will recall that in early 2010, your client agreed to an arrangement by which you would dismiss the Complain you had filed against Midway City in Fourth District Court in

exchange for the City approving an amended master plan for Sunburst Ranch P.U.D. containing various terms that your client negotiated with the City.”

(It is clear even back in 2011 after the Condies got out from under their development obligations for Phase 1 they were trying to get out of honoring their promises)

4/8/15 – City Council Meeting Staff Report

This request for preliminary approval of Phase II of the Sunburst PUD.

“The Sunburst master plan was originally approved by the City in 1997 and contains three phases. The first phase is completed and contains 31 units. The second phase will contain 19 units. The third and final phase will contain 36 units. The total for the entire master plan is 86 units. **The units in Phase II will be part of the Sunburst Home Owners’ Association (HOA) and will have access to the amenities provided by the HOA.** The units in phase II will also be subject to the design guidelines as stated in the CC&Rs and will need to receive approval from the HOA.”

4/8/15 – City Council Meeting

Approval of Sunburst Ranch Phase 2.

Michael Henke states “**All phases of the development would be part of the same HOA.** This would make the HOA healthier and easier to administer.” and “The majority of the open space and amenities would be in Phase 3.”

6/11/15 – Email from Condie to Michael Henke

Stating that the lack of open space in phase 2 would be covered in phase 3.

6/17/15 – Phase 2 Approval Meeting

The plan followed the 2010-07 resolution exactly.

Note that phase 2 will have access to the amenities (Planned in phase 3).

Phase 3 was mentioned several times and Phase 2 could not be approved based on open space requirements with Phase 3 being tied to it.

*** This approval was agreed to and supported by Condie for open space and amenities in Phase 3 and this was after the expiration of the 10 year annexation statements in the CC&Rs.

7/8/15 – Midway City Council Meeting

Michael Henke stated the following:

“Had worked with the president of the Sunburst Ranch HOA regarding the request.”

“Most open space would be in Phase III.”

“The HOA approved of the new phase.”

Council Member Hines was concerned about the open space being in the last phase. Mr. Henke responded that the Municipal Code now required the open space at the beginning of the project. He said there was no such requirement when the development’s master plan was originally approved.

The City Council approves Resolution 2015-11 Sunburst Ranch Phase 2.

11/6/15 – Resolution 2015-11 Recorded

Authorizing Phase 2 of Sunburst Ranch PUD.

“4. All units and unit owners in Phase 2 will belong to the HOA and will be subject to the covenants, conditions and restrictions and design guidelines of the HOA and its governance committees and processes. Units and unit owners in Phase 2 will have rights to the amenities of the HOA enjoyed by **all other phases of the Sunburst development.**”

5/11/17 – Email from Wes Johnson to Michael Henke and Colleen Bonner

Stating that Condie wants to discuss some different options to the master plan of Phase 3.

No one from Midway City ever let Sunburst Ranch OA know that the Condies were proposing to modify the approved layout of Phase 3.

9/22/17 – Email from Kent Wilkerson to Michel Henke

States in regard to the current Phase 3 master plan (2010-07) that “Nevertheless, it is the approved City Ordinance and the plan for the site and we can engineer it to work.”

10/16/17 – Email from Celeste Johnson to Michael Henke

Regarding her meeting with Condie

“I can’t help think he was trying to get me on his side.”

“So the question is, why does he need me on his side?”

12/5/17 – Email from Kent Wilkerson to Michael Henke

Condie offers to open the retention pond to stop Swiss Mountain runoff.

Reduces the number of homes from 36 to 33 but increases the lot sizes.

Removed all the amenities.

Askes for water shares back from the city for Condie to sell.

Changes the terms of the \$55K reimbursement to the HOA to add an additional 10 year payback period.

Sunburst Ranch OA had not been contacted by Condies about these changes and we had no idea the Condies were trying to make these changes.

2017 - Proposed amending master plan

Planning commission – Wilkerson states that the Phase 1 drainage system is sufficient to accommodate the Phase 3 runoff, **this assumes Phase 3 is part of the HOA.**

12/13/17 – City Council meeting

Sunburst Ranch PUD / Master Plan Amendment for Phase 3

It is stated that this amendment was recommended without conditions by the Planning Commission, what it does not say is that Sunburst Ranch OA was not informed of this

proposed amendment by either Midway City or the Condies and they Condies led the Planning commission to believe the HOA was OK with these proposed changes which we are not.

Kent Wilkerson states "The HOA would control the open space and could build amenities." (Clearly the Condies don't have problems with the amenities they simply do not want to pay for them)

Corbin Gordon stated "that the master plan applied to all phases and units in a project and could not be undone. He noted that the City had no obligation to amend the master plan."

Mr. Henke states "The request was a legislative item and did not have to be granted by the Council. The applicant needed to demonstrate that it was beneficial."

The Condies ask for their master plan amendment to be tabled.

1/30/18 – Letter from Robert Mansfield to Michael Henke

Claiming the HOA has absolutely no say in the development of Phase 3 (based entirely on the CC&Rs) and telling Henke to disregard any HOA objections.

2/21/18 – Email from Michael Henke to Kent Wilkerson

Regarding getting the Condies proposal before the council again.

Henke responds "Until you can convince the HOA that the new plan is acceptable and we receive a response from them, I feel the item is not ready to be heard again"

3/6/18 – Letter from Corbin Gordon to Condies

Corbin Gordon (Midway City Attorney) states that **Phase 3 is required to be part of Sunburst Ranch OA** and must build per the binding 2010-07 agreement.

*** This letter is included with your packet.

6/10/18 – Association vote on amending master plan.

Over 90% voted NOT to allow the modification to the 2010-07 binding agreement.

3/20/19 – Email from Celeste Johnson to Sunburst Ranch OA Board

States in regard to conversation with Condies that "..., that there are 2 choices here. One is to proceed with the project AS IT IS APPROVED. The second is to make changes that are AGREED upon by the **HOA**, City Planning Commission and City Council."

3/28/18 – City Council Work Meeting

Mayor Jonson states she spoke with Condie and "She reiterated to him that he needed to develop it under the approved master plan or get the approval of the HOA for any changes."

3/5/19 – Midway City Council Meeting

Sunburst Ranch PUD Master Plan Amendment

Corbin Gordon stated:

- . Open space was pushed up to the top of Phase 3. The other phases could not have been approved without the open space in Phase 3.
- . Phase 3 **did** have to be built in accordance with the controlling documents.
- . One HOA and connecting roads between phases was always anticipated.

Condie's state:

- . Phase 2 in the project had been sold to someone else and had a lot of problems. Only one unit had been built in the phase after two years.
- . The existing HOA was too interested in every detail of the construction.
- . The applicant did not want to be subject to the existing HOA during construction and wanted to finish the phase in a timely manner. The HOA's could merge after construction was completed.

(HOA response is that Condie's statement about the HOA being a problem for Phase 2 is absolutely incorrect, in fact the developer of Phase 2 Derek Mouser has stated That the HOA has been great to work with and any and all delays in construction have then his own fault along burdensome demands from Midway City. The Condie's have in the past thrown out an example of the HOA having to put the color of a door on a new home in Phase 2 to a vote of all the owners, this is simply a lie and never happened, requests from Derek are handled timely and the HOA has never help up any of his construction. The HOA should never be asked to let a developer build a phase without some HOA oversight and then be asked to take it over and inherit all the problems)

The council voted to table the motion.

3/19/19 – Midway City Council Meeting

Sunburst Ranch PUD Master Plan Amendment

Condie's state that "Reopening the retention pond was not required but would be done if the amendment was approved. (HOA response is the is not true, the retention pond would be open and used to catch Swiss Mountain runoff based on the approved 2010-07 master plan and the Condie's are again trying use the pond a ploy to get their own way) Condie's state that "There was no requirement that the residents in the other phases should be able to use the amenities in the third phase." (HOA response is that clearly there was)

The Council, staff and meeting attendees discussed the following items related to the proposed development:

- . The Council was not obligated to approve the amendment.
- . The City did not enforce the CC&Rs for a development.
- . Any agreement should avoid the issue of multiple homeowners' associations.
- . The retention basin was build and functioning before the 2010 plan was approved. It was closed after the plan was approved (By the Condie's).

- . People purchased units based on the plan for the entire project. There could be small but not large changes to the plan.
 - . The City was not slowing down the development because the applicants could always build the 2010 plan.
 - . The engineer, who designed the 2010 plan, said there were ways to mitigate the concerns with the slope.
- The City Council voted to table the proposal.
-

Comments Regarding the Staff Report presented to you for this meeting

Sunburst Ranch OA has some issues with the “City Council Work Meeting Staff Report” that is being presented to the City Council and we offer these remarks.

In the Background section where Steve Condie states the main reason for the amendment request is “to avoid difficult site construction” is simply an attempt to reduce the Condies cost of construction and take away from the HOA, there are homes and roads in both Phase 1 and Phase 2 that are built on the same slopes as Phase 3 and there have been no problems with them. The Condies own engineer has stated multiple times that there is nothing stopping them from physically constructing Phase 3 as they agreed to in the 2010-07 resolution.

The section where Condies state that they are proposing to move the location of the amenities makes it appear as they are still including the amenities as required in the 2010-07 Resolution when in fact they are not giving us the same amenities and they are placing them right behind homes where noise will be a huge problem and there is no easy access or parking to gain access to the proposed amenities, the only access will be between homes. The 2010-07 Master plan has the amenities in a park setting along a road with 15 parking spots and direct access to the amenities and they are not behind any homes.

We completely disagree with the statement that the Condies proposed amendment has more viable open space from Swiss Alpine Road, with the amenities as laid out in the 2010-07 plan included as open space (Which is in the Midway City Code) the open space is just a visible from Swiss Alpine Road and the open space is just as contiguous.

The section “Open Space” that states the proposed amendment complies with the 50% per phase is misleading in that the 2010-07 Master plan also complies with this requirement and Phase 3 is not a standalone entity since Phase 1 and Phase 2 were approved in violation of this rule with the agreement that Phase 3 would cover the open space for all phases.

The section “Swiss Alpine Road Drainage” stating that the Condies proposed resolution is an opportunity to address this issue is now **VOID** since Midway City has already had to expend the funds to re-engineer both entrances to Phase 1 because the Condies closed the retention pond off in early 2018. Also even in the 2010-07 approved master plan the retention pond in the South West corner of Phase 3 would also be used to catch runoff from Swiss Mountain Estates.

The section “Planning Commission Recommendations:” is of no use since all recommendations and comments from the Planning Commission were based on a completely different proposed layout. Also the HOA had no input to the Planning Commission since Condie lead the Commission to believe the HOA was on board with the proposed changes when in fact we had no idea they were being proposed.

LAND USE ORDINANCE (updated in February 2009)

02.05.049 Planned Unit Development (PUD)

A tract of land which is planned and **developed as a single entity**, wherein the requirements applying to all buildings and improvements are modified to conform to the approved plan.

PUDs shall be required to either (1) deed to each owner in the PUD an undivided ownership interest in the open space contained within the PUD and form **a homeowners association** which shall be responsible for maintaining such open space according to Covenants, Conditions and Restrictions recorded with the plat or (2) place the open space in a perpetual conservation easement granted to an established conservation organization.

Because of the increased density afforded to PUDs, open space areas shall be placed so as to **benefit the health, safety and general welfare of the whole community and not merely the development**.

If development is to be phased, a phasing plan showing construction schedule of streets, infrastructure, amenities and other improvements.

Said plan shall be made to **make each phase stand alone** in all requirements of this Ordinance, including, but not limited to open space, traffic safety & circulation, infrastructure requirements and so forth.

HOA observations from Midway City Land Use Ordinance

1. PUDs must be developed as a single entity, in the case of Sunburst all 86 homes must be part of (single) “a homeowners association”.

2. The open space must be a benefit to the entire community at large. Sunburst Ranch OA has stipulated that the open space, park, trails and amenities will be usable by the surrounding community with the Association taking care of maintenance.
 3. Since Phase 1 and 2 were approved and constructed with far less than the 50% open space now required for each phase with the promise from the developer that Phase 3 would cover all of that open space, phase 3 cannot form their own Home Owners Association and must be part of Sunburst Ranch OA.
-

Conclusions

The section in the CC&Rs regarding the annexation of additional lands is void and was void the moment Condie wrote it. The CC&Rs were written by Condie for Condie and they are not binding on the City and the section about the annexation is not binding on the Association or City pursuant to letter dated 6/20/18 from Corbin Gordon to Condies stating Midway Cities legal opinion that Phase 3 must be part of Sunburst Ranch OA and must build according to the 2010-07 binding layout.

The Retention pond at the South West corner of Phase 3 that the Condies keep using as a carrot to Midway City is no long an issue. Because the Condies blocked of the pond in early 2018 after the City tabled their motion the City was forced to spend many thousands of dollars to tear out and replace the gutter system at both entrances to Sunburst Ranch PUD so the runoff from Swiss Mountain would run down Swiss Alpine Road and into our lower retention pond to capture al the water, dirt and gravel. We gladly allowed our pond to be used so as to not push this runoff problem down to the next subdivision. (This is something the Condies should have done for the Association and Midway City right at the top of Phase 3)

In 2018 Condies sued Sunburst Ranch OA in an attempt to have the court rule the CC&Rs allow the Condies to not annex Phase 3 into the association and to force the HOA to allow use of our private roads and storm drains by Phase 3 while not being a member of the HOA. The Condies have claimed to have prevailed in this suit but that is not correct, the case is still waiting for a trial date to be set, the Condies did get summary judgement that they did not have to part of the HOA based strictly on the CC&Rs only, since the court could not use any of the Midway City resolutions unless Midway City was a party to this suit we chose not to challenge the motion since we did not want to bring Midway City into the suit at this time. In our legal teams view this judgement is meaningless since it does not take into account any of the other binding recorded documents which would render it void.

In 2018 Condies sued the Sunburst Ranch OA President personally for \$300K for speaking up against the Condies proposal to modify the binding 2010-07 resolution at the City Council meeting.

This case is nothing but a SLAP suit intended to intimidate and bully us to accept their proposed changes. Multiple legal parties have agreed their suit has no merit and our HOA insurance provider which is paying to defend the HOA and the President has refused to settle for any amount. The case was set for trial in early May but because of COVID-19 it has been postponed indefinitely.

The Condies have placed "No Trespassing" signs all along the Phase 3 border, sent letters to the association demanding no HOA member sets foot on Phase 3 and they have called the County Sheriff several times on the Sunburst Ranch OA, Swiss Mountain Estates and Spectrum Landscape for trespassing. The Association has historically pushed snow at the end of Ranch Way off to the east side of Phase 3 property to open the end of the road and give access to the property for the Condies and access to the fire hydrant that is 40' onto Phase 3, the Condies were required by the Phase 1 agreement to put a 40' paved turnaround but never did, when we do push the snow onto Phase 3 to keep the access to the fire hydrant the Condies call the Sheriff. We have always and still allow the Condies to use our private roads to gain access to Phase 3 even thou they have full access to the property off of Swiss Alpine Road.

Condies have many times promised to open and keep open the retention pond at the South West corner of the PUD to catch Swiss Mountain runoff. They have repeatedly closed off the pond when they do not get their way causing damage and financial costs to both Sunburst Ranch OA and Midway City. The pond is currently blocked by a dirt bank the Condies had installed and has caused homes in Phase 1 to be flooded, dirt and gravel to clog the storm drain system and forced Midway City to spend many thousands of dollars to reengineer both entrances to Sunburst Ranch Phase 1.

Sunburst Ranch OA now allows all runoff from Swiss Mountain Estates to dump into its retention pond at the South East end of the property to prevent flooding and damage to Sunburst Ranch PUD and other PUDs east of Sunburst Ranch.

Sunburst Ranch OA has been damaged many ways (Money, open space, blocked views, density, etc.) and the Phase 3 layout was offered and accepted as a way to mitigate those damages.

The Association has never asked Midway City to deny Condie the right to develop his property, he could do so right away by simply applying with the City to approve a development agreement that followed the binding 2010-07 resolution. It is strictly Condies decision not to develop the property.

The Association has never asked the City to “Take” anything from Condie, all binding agreements in place were voluntarily approved in writing by Condie. To change any of the agreements without Association approval would amount to “Taking” from the Association.

Condies voluntarily agreed to all the resolutions and should have no expectations that those agreements will now be modified so they can make more money.

The agreements are binding and Midway City has absolutely no obligation to allow them to be amended and cannot unless Sunburst Ranch Association approves amending.

The amendment proposed by Condie offers no benefit to either Midway City or the Association, in fact it introduces new many problems for Midway City.

By denying the proposed amendment you are neither taking from the Condies nor are you blocking their ability to develop the property, the Association would welcome and support development of Phase 3 as it is approved in the 2010-07 master plan.

Sunburst Ranch Owners Association being a party to the 2010-07 binding resolution and with the home owners overwhelmingly voting that they were promised, legally entitled and still expecting all aspects of the resolution, we fully expects Midway City to honor and enforce the resolution as recorded.

The Associations resistance to the Condies proposal has nothing to do with pettiness or hostility from the HOA Board it is simply that the HOA was promised the 2010-07 master plan and that layout is by far the best for the Association, Midway City and the citizens

Sunburst Ranch Owners Association overwhelming does not approved of the Condie requested amendment to the 2010-07 Sunburst Ranch PUD master plan and requests you DENY the proposed amendment.

Regards
Sunburst Ranch OA